

Translation

TENT COOPERATION TREATY

PCT/CH2003/000437



# PCT

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 12-64.B.WO-2	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/CH2003/000437	International filing date (day/month/year) 02 juillet 2003 (02.07.2003)	Priority date (day/month/year) 03 juillet 2002 (03.07.2002)
International Patent Classification (IPC) or national classification and IPC A61M 37/00, 5/50		
Applicant DEBIOPHARM S.A.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of \_\_\_\_\_ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 29 janvier 2004 (29.01.2004)	Date of completion of this report 02 November 2004 (02.11.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/CH2003/000437

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed
- ☒ the description:  
 pages 1-6, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
 pages 1-11, as originally filed  
 pages \_\_\_\_\_, as amended (together with any statement under Article 19  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the drawings:  
 pages 1/2-2/2, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/CH 03/00437

## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

Novelty (N)	Claims		YES
	Claims	1-11	NO
Inventive step (IS)	Claims		YES
	Claims	1-11	NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

### 2. Citations and explanations

Reference is made to the following documents:

D1: FR-A-2 351 642 (TURLEY ROGER) 16 December 1977 (1977-12-16)

D2: US-A-4 223 674 (FLUENT STEWART L ET AL) 23 September 1980 (1980-09-23)

D3: US-A-4 576 591 (KAYE GORDON E ET AL) 18 March 1986 (1986-03-18)

1. Document D1, which is considered the prior art closest to the subject matter of claim 1, describes (see page 9, line 2 to page 11, line 13, figures 9-14) (references between parentheses apply to said document):

1.1 A device for inserting implants (118) in the form of a small diameter cylinder including gripping means (10', 12'), a trocar (26) attached via the proximal end thereof to the gripping means (10', 12') and a push member (32) in the form of a stem slidably mounted in the trocar (26) and the gripping means (10', 12'), wherein the latter comprise a rotary member (106) defining an axis of rotation (128) parallel to the axis of the trocar (26) and including a plurality of tubular members (118) arranged about said axis of rotation (128) and mounted in such a

way that they are capable of being successively aligned with the trocar (26), the rotary member (106) forming part of the gripping means (10', 12') and extending over a major portion of the length thereof, and each tubular member (118) being arranged to contain one or more implants.

Consequently, document D1 discloses all the features of claim 1, the subject matter of which is therefore not novel (PCT Article 33(2)).

Moreover, the subject matter of claim 1 is likewise not novel over D2 (see column 5, lines 32-61).

2.1 **Dependent claims 2 to 11** do not appear to contain any feature which, in combination with those of any of the claims to which they refer, might define subject matter that meets the PCT requirements with respect to novelty and/or inventive step. See, e.g.:

2.1.1 **Novelty:**

D1: page 8, lines 13-28, figure 9 and page 9, lines 2-8, figure 10, for **claims 8 and 9**;

2.1.2 **inventive step:**

D3: figures 3, 4, for **claims 2, 3, 7**;

D1: see e.g. page 10, lines 5-10, for **claims 5 and 6**;

D4: page 8, lines 9-15, figure 5, for **claim 10**.

2.2 A slight alteration to the construction of the device described in claim 1 is defined in **claims 4 and 11**; this alteration is part of the standard practice of a person skilled in the art and the advantages resulting therefrom are easy to foresee. Consequently, the subject matter of **claims 4 and 11** does not involve an inventive step either.